REMARKS/ARGUMENTS

The Office Action of November 30, 2005, and the Advisory Action of March 2, 2006, have been carefully reviewed and this response addresses the concerns stated in the Office Action. All objections and rejections are respectfully traversed.

I. STATUS OF THE CLAIMS

Claims 1-4 and 6-58 are pending in the application.

Claim 5 has been cancelled.

Claim 58 has been added. Support for claim 58 can be found in Applicant's Specification, page 18, line 16 -- page 19, line 14. No new matter has been added.

Claims 1 and 44 have been amended to further define the invention and to correct informal errors. Support for the amendments can be found in Applicant's Specification, page 8, lines 3-17. Claims 5, 6, and 7 have been amended to provide consistency with the changes made in claim 1. Claims 2, 24, 29, and 47 have been amended to clarify that the gateways managing the network elements are performing protocol translations from one communication protocol to another. Support for these amendments can be found in Applicant's Specification, page 12, lines 15-18. No new matter has been added.

Claims 1-19, 21-39, and 41-57 are rejected under 35 U.S.C. § 102(e) as being anticipated by Goldszmidt et al, United States Patent Number 6,195,680, issued on February 27, 2001 (Goldszmidt).

Claims 20 and 40, which depend on independent claims 1 and 27, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Goldszmidt in view of Wolf et al., United States Patent Number 6,374,297, issued April 16, 2002 (Wolf).

II. REQUEST FOR CONTINUED EXAMINATION

Applicant herewith files a Request for Continued Examination under 37 C.F.R. § 1.114.

III. REQUEST FOR A ONE-MONTH EXTENSION OF TIME

Applicant herewith files a request for a one-month extension of time under 37 C.F.R. § 1.136 (a), along with the appropriate fee for a large entity. The mailing date of the Office Action was November 30, 2005, and thus this response is timely filed, with a one-month extension of time, on or before March 30, 2006.

IV. REJECTIONS UNDER 35 USC § 102(e)

On pages 2-8, paragraphs 2-3, the Office Action states that claims 1-19, 21-39, and 41-57 are rejected under 35 U.S.C. § 102(e) as being anticipated by Goldszmidt.

Applicant respectfully points out that the cited reference, Goldszmidt, was published on February 21, 2001, within a year of the filing date of the present application, May 29, 2001. Applicant respectfully reserves the right to file a petition under 37 C.F.R. § 1.131 to swear behind Goldszmidt.

Applicant further respectfully points out that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (CAFC, 1987), M.P.E.P. § 2131. As provided by the remarks set forth below, clearly this is not the case with the present rejection of the claims. In summary, Goldszmidt does not anticipate Applicant's invention at least because of the following:

(1) Goldszmidt does not disclose Applicant's claimed "each of said gateways responsible for managing one or more network elements" (independent claim 1), or Applicant's claimed "each of said plurality of distributed gateways is responsible for managing one or more of said plurality of network elements" (independent claim 27), or a "plurality of distributed gateways, each for managing one or more network elements" (independent claim 44), because Goldszmidt's servers (which the Office Action analogizes to Applicant's gateways) do not

manage the Goldszmidt's clients (which the Office Action analogizes to Applicant's claimed network elements).

(2) Goldszmidt does not disclose Applicant's claimed "detecting failure by the at least one gateway monitoring system, of one of the plurality of distributed gateways" (independent claim 1), or Applicant's claimed "gateway monitoring system is operable to detect failure of at least one of said distributed gateways" (independent claim 27), or Applicant's claimed "gateway monitoring system communicatively coupled to said plurality of distributed gateways, said gateway monitoring system capable of for detecting failure of anyone of said distributed gateways" (independent claim 44), because Goldszmidt's clients (analogized by the Office Action to Applicant's claimed network elements) detect failure of Goldszmidt's servers (analogized by the Office Action to Applicant's claimed gateways).

(3) Goldszmidt does not disclose Applicant's claimed "system comprising a plurality of network elements" and "plurality of distributed gateways . . . wherein each of said plurality of distributed gateways is responsible for managing one or more of said plurality of network elements" (independent claim 27), because the Goldszmidt's servers (analogized by the Office Action to Applicant's claimed distributed gateways) do not manage Goldszmidt's clients (analogized by the Office Action to Applicant's claimed network elements).

(4) Nowhere does Goldszmidt disclose or suggest Applicant's claimed "translating a communication protocol" (dependent claim 2, and similar language in dependent claims 24, 29, 36, 47, and 54).

(5) Nowhere does Goldszmidt disclose or suggest Applicant's claimed "said one or more gateway monitoring systems polling said plurality of distributed gateways" (dependent claim 6, and similar language in dependent claims 31, and 48).

Applicant provides the following arguments in support of the patentability of claims 1-19, 21-39, and 41-57.

On pages 2-3 and 10, in paragraphs 3 and 6, with respect to independent claims 1 and 44,

(1) The Office Action states that Goldszmidt discloses, in passages FIGs. 1a, 5, Abstract, col. 5, lines 22-64, and col. 9, line 47 – col. 10 line 48, each of said gateways responsible for

managing one or more network elements (the Office Action states that client 1.8 of FIG. 1a could be multiple clients).

In rebuttal to the above, the Office Action draws an analogy between Applicant's gateways and Goldszmidt's servers, and Applicant's claimed network elements and Goldszmidt's clients, and states that Goldszmidt discloses Applicant's claimed gateways responsible for managing one or more network elements. However, this is not the case according to the cited passages. In fact, according to the cited passages (FIGs. 1a, 5, Abstract, col. 5, lines 22-64, and col. 9, line 47 – col. 10 line 48), Goldszmidt's client is provided with a server ID by Goldszmidt's control server, and Goldszmidt's client initiates a connection with the server. When the connection is established, Goldszmidt's server sends a streaming file to Goldszmidt's client, but nowhere does Goldszmidt's server perform Applicant's claimed step of managing the client because even a broad reading of Goldszmidt's server's action (which is confined to sending streaming data to the client) with respect to Goldszmidt's client can be interpreted to include Applicant's claimed step of gateways (analogized by the Office Action to Goldszmidt's servers) managing network elements (analogized by the Office Action to Goldszmidt's clients). For this reason, Goldszmidt cannot anticipate Applicant's claims 1 and 44, and the rejection of claims 1 and 44 under 35 U.S.C. §102(e) should be withdrawn.

(2) The Office Action states that Goldszmidt discloses, in 1.2 FIG. 1b, detecting failure of one of said distributed gateways (the Office Action states: detecting a failure in the stream or stream server).

In rebuttal to the above, Applicant has amended claims 1 and 44 to clearly point out that Applicant's claimed gateway monitoring system performs Applicant's claimed step of detecting failure of a distributed gateway, as stated above. In the Office Action's comment with respect to the cited reference, the Office Action states an equivalence between Applicant's claimed gateway and Goldszmidt's server. Applicant has previously pointed out that if Applicant's gateway and Goldszmidt's server are equivalent, then Goldszmidt cannot anticipate Applicant's claims 1 and 44. For this reason, the rejection of claims 1 and 44 under 35 U.S.C. §102(e) should be withdrawn.

(3) The Office Action states that Goldszmidt discloses receiving a notice (the Office Action states: the primary ID or the secondary ID) of the detected failure at a central

management system (control server 1.1, FIG. 1a) (the Office Action states: when the client detects a failure in the stream of the primary streaming server, the client passes the primary ID or the secondary ID to the control server (1.1 of FIG. 1a)).

In rebuttal to the above, Applicant has amended claims 1 and 44 to clearly point out that Applicant's claimed notice of detected failure is received from Applicant's claimed gateway monitoring system that detected the failure in the previous step, not from the client (Applicant's claimed network element), as the Office Action states with respect to the cited passage. For this reason, Goldszmidt cannot anticipate Applicant's claims 1 and 44, and the rejection of claims 1 and 44 under 35 U.S.C. §102(e) should be withdrawn.

(4) The Office Action states that Goldszmidt discloses, in cited passages FIG. 1b, col. 7, line 11 -- col. 12, line 33) (Applicant assumes the Office Action meant col. *8*, line 33), responsive to said receiving step, recovering, by the central management system, management of said one or more network elements for which said failed gateway had management responsibility by assigning management responsibility to at least one other of said plurality of distributed gateways (the Office Action states: switching the client agent to an alternate streaming server).

In rebuttal to the above, the cited passage states that Goldszmidt's client detects a failed server and reconnects to another server based on an ID provided by the control server. Neither Goldszmidt's control server nor Goldszmidt's server, however, perform Applicant's claimed step of recovering, by the central management system, management of network elements for which the failed gateway had management responsibility by assigning management responsibility to at least one other of the gateways because neither Goldszmidt's control server nor Goldszmidt's server exercises management over the Goldszmidt's clients. Whereas Goldszmidt's client detects failure and initiates recovery, Applicant claims a management recovery system (401 and 202, Applicant's FIG. 4) to recover management of the network element (e.g. 214, Applicant's FIG. 4) for which the failed gateway (e.g. 210, Applicant's FIG. 4) has management responsibility. Further, failure detection and recovery is not initiated by Applicant's network element, whereas Goldszmidt clearly states that the clients themselves detect failure and initiate recovery (col. 10, line 7). Therefore Goldszmidt cannot anticipate Applicant's claims 1 and 44 because Goldszmidt does not disclose all of Applicant's claimed

steps and elements, and the rejection of claims 1 and 44 under 35 U.S.C. §102(e) should be withdrawn.

On page 6, with respect to claim 27,

(1) The Office Action states that Goldszmidt discloses a system comprising a plurality of network elements (the Office Action states that clients 1.8, FIG. 1a could be multiple clients, col. 9, line 47 – to col. 10, line 48) and plurality of distributed gateways (the Office Action states that servers 1.2, 1.3 of FIG. 1a could be gateways, col. 4, lines 27-58) each communicatively coupled to one or more of said plurality of network elements, wherein each of said plurality of distributed gateways is responsible for managing one or more of said plurality of network elements (Goldszmidt, FIGs. 1a, 5, col. 5, lines 22-64).

In rebuttal to the above, the three cited passages from Goldszmidt taken together state that the control server can receive requests from the client and provide the client with information in which to establish communications with the appropriate server, and that the client determines if the server has failed and initiates recovery measures. Applicant claims, on the contrary, a plurality of distributed gateways responsible for managing a plurality of network elements, or in the terminology of Goldszmidt, a plurality of servers responsible for managing a plurality of clients. However, nowhere does Goldszmidt state that the servers manage the clients, but in fact, in Goldszmidt there is no management of the clients whatsoever because the clients act autonomously in requesting server services. Further, Goldszmidt's control server does not manage Goldszmidt's servers, because for one device to manage another, the first device would have to be directing the second device to perform some action, and there is no evidence that this is happening with respect to Goldszmidt's servers and Goldszmidt's clients . For this reason, Goldszmidt cannot anticipate Applicant's claim 27, and the rejection of claim 27 under 35 U.S.C. §102(e) should be withdrawn.

(2) The Office Action states that Goldszmidt discloses a gateway monitoring system (1.1 FIG. 1a), wherein said gateway monitoring system (1.1, FIG. 1a) is operable to detect failure of at least one of said distributed gateways and management recovery system communicatively coupled to said plurality of distributed gateways (the Office Action states: detecting a failure in the stream or stream server 1.2 FIG. 1b and further discloses a dispatcher subsystem (642 FIG. 6) for assigning primary and secondary reflectors to a client based on their desired source).

In rebuttal to the above, Goldszmidt states a dispatcher that performs the function of Goldszmidt's control server, and Goldszmidt states reflectors that perform the function of Goldszmidt's servers. Further Goldszmidt states that the dispatcher assigns reflectors based on client requests (Goldszmidt, col. 15, lines 4-6). In this embodiment, therefore, as in the embodiment previously discussed, Goldszmidt's clients detect failure, whereas Applicant claims a gateway monitoring system coupled to the gateways – which are separate from the gateway monitoring system and which detect failure -- which are coupled to the network elements. For this reason, Goldszmidt cannot anticipate Applicant's claim 27, and the rejection of claim 27 under 35 U.S.C. §102(e) should be withdrawn.

(3) The Office Action states that Goldszmidt discloses wherein said management recovery system is operable to autonomously recover management of said one or more network elements for which a detected failed gateway has management responsibility (the Office Action states: detecting failure of a streaming server and switching the client agent to an alternate streaming server, FIG. 1b, col. 7, line 11 -- to col. 12(8?), line 33, col. 9, lines 7-47, col. 14, line 61 – col. 15, line 42).

In rebuttal to the above, in either of Goldszmidt's embodiments, the client detects failure of a server and initiates recovery measures. Nowhere does Goldszmidt disclose or suggest Applicant's claimed management recovery system that recovers management of network elements (the Office Action has equated these to Goldszmidt's clients) for which a detected failed gateway (the Office Action has equated these to Goldszmidt's servers or reflectors) had management responsibility, because Goldszmidt's clients are not managed by any entity in Goldszmidt, including the server, the reflector, the control server, or the dispatcher. For this reason, Goldszmidt does not anticipate Applicant's claim 27, and the rejection of claim 27 under 35 U.S.C. §102(e) should be withdrawn.

Since Goldszmidt does not anticipate and/or make obvious each and every element of Applicant's independent claims 27 and 44, and each and every step of Applicant's independent claim 1, Applicant's claims 1, 27, and 44, as well as dependent claims 1-26, 28-43, and 45-58 that depend, either directly or indirectly, therefrom and that further define the invention, are not anticipated by Goldszmidt, and a rejection under 35 U.S.C. § 102(e) is inappropriate. Applicant asserts that independent claims 1, 27, and 44, as well as dependent claims 1-26, 28-43, and 45-

58 that depend, either directly or indirectly, therefrom and that further define the invention, are now in condition for allowance. Applicant respectfully requests the withdrawal of rejections under 35 U.S.C. § 102(e) (and 35 U.S.C. 103 (a)) with regards to dependent claims 20 and 40) for the reasons set forth above. Furthermore, a 35 U.S.C. § 103 rejection of these claims would be inappropriate as well. Applicant's claimed invention is not an obvious extension of the use of Goldszmidt to meet Applicant's patentable limitations.

To further Applicant's position of the patentability of claims 2-4, 6-19, 21-26, 28-39, 41-43, and 45-58, Applicant notes the following.

On pages 3 and 8, with respect to dependent claims 2 and 47, which depend from claims 1 and 44, the Office Action states that Goldszmidt discloses translating a communication protocol utilized by said one or more network elements (the Office Action states that using the changed start up protocol of the TCP-router node so that recovery of the primary router will not cause a failure in a backup that has taken over for it, FIG. 1a, col. 6, lines 8-60).

In rebuttal to the above, Applicant has amended claims 2 and 47 to clarify that one communication protocol is being translated to another communication protocol. Goldszmidt's "start up protocol" is a list of commands necessary to activate either the primary or backup TCP-router node, but it is not Applicant's claimed communication protocol as is commonly understood in the art and presented in Applicant's Specification to mean protocols such as SNMP or CMIP (Applicant's Specification, page 12, col. 15-20). Nowhere does Goldszmidt disclose Applicant's claimed translating from one communication protocol utilized by one or more network elements to another communication protocol because Goldszmidt states a single communication protocol, TCP/IP, with no provision or suggestion that any other communication protocol is contemplated or accommodated. For this reason, Goldszmidt cannot anticipate Applicant's claims 2 and 47, and the rejection of claims 2 and 47 under 35 U.S.C. § 102(e) should be withdrawn.

Applicant asserts that dependent claim 3 is allowable at least by virtue of its dependence upon allowable independent claim 1.

On pages 3-4 and 7-8, with respect to dependent claims 4, 6-12, 28-35, 41, and 48-53, which depend from independent claims 1 (4, 6-12), 27 (28-35 and 41), and 44 (48-53), with

reference to Goldszmidt's passages FIGs. 1a and 1b; col. 7 line 11 – col. 8, line 34; and col. 9, lines 6-47:

(1) With respect to claims 4, 6, and 48, the Office Action states that Goldszmidt discloses said management system controlling said recovering step, said one or more gateway monitoring systems performing said detecting step and polling said plurality of distributed gateways (detecting failure in streaming servers acting as gateways to clients).

In rebuttal to the above, with respect to claim 4, nowhere does Goldszmidt disclose or suggest Applicant's claimed management system controlling said recovering step, which includes recovering management of network elements, because, as stated previously, Applicant's claimed network elements (Goldszmidt's clients) are not managed in Goldszmidt's system, but instead Goldszmidt's clients manage detection and recovery of failure autonomously. For this reason, Goldszmidt cannot anticipate Applicant's claim 4, and the rejection of claim 4 under 35 U.S.C. § 102(e) should be withdrawn.

In further rebuttal to the above, with respect to claims 6 and 48, Goldszmidt does not disclose or suggest Applicant's claimed gateway monitoring systems polling the distributed gateways (which the Office Action has equated to Goldszmidt's servers), because the gateway monitoring system, which Applicant assumes the Office Action would equate to Goldszmidt's control server, relies on Goldszmidt's client to determine if Goldszmidt's servers have failed. Applicant's claimed polling involves sending a request from the gateway monitoring system to the gateways and determining if a response is timely or ever received. Goldszmidt states that the client determines if the stream has failed, but nowhere does Goldszmidt disclose any sort of polling. Thus, even if, in functionality and connectivity, Goldszmidt's servers anticipated Applicant's claimed plurality of distributed gateways, which they do not, nowhere does Goldszmidt disclose polling of the servers by any of Goldszmidt's elements, including the control server and the clients. For these reasons, Goldszmidt does not anticipate Applicant's claims 6 and 48, and the rejection of claims 6 and 48 under 35 U.S.C. § 102(e) should be withdrawn.

(2) Dependent claim 5 has been cancelled.

(3) With respect to claims 7-9, 32, 33, 50, and 51, the Office Action states that Goldszmidt discloses said one or more gateway monitoring systems controlling said recovering step, determining management activities for which a detected failed gateway is responsible for

performing and determining one or more available gateways from said plurality of distributed gateways, which are available for assuming at least a portion of said management activities of said detected failed gateway (the Office Action states detecting failure in streaming servers acting as gateways to clients).

In rebuttal to the above, with respect to claim 7, nowhere does Goldszmidt disclose or suggest Applicant's claimed gateway monitoring system controlling the recovering step, which includes recovering Applicant's claimed network element (the Office Action equates Applicant's network element to Goldszmidt's client) for which a failed gateway had management responsibility, because Goldszmidt states that Goldszmidt's client controls recovery, and further, there is no management responsibility disclosed or suggested of Goldszmidt's client. For these reasons, Goldszmidt does not anticipate Applicant's claim 7, and the rejection of claim 7 under 35 U.S.C. § 102(e) should be withdrawn.

In further rebuttal, with respect to claims 8, 9, 32, 33, 50, and 51, nowhere does Goldszmidt disclose or suggest Applicant's claimed management recovery system (claim 32) that determines management activities for which a detected failed gateway is responsible for performing, nor Applicant's claimed determining a gateway that can assume the management activities of a failed gateway, because in Goldszmidt, the servers (the Office Action states an equivalence between Goldszmidt's servers and Applicant's claimed gateways) do not perform management activities, they simply respond to client requests for data and provide that data. For this reason, Goldszmidt does not anticipate claims 8, 9, 32, 33, 50, and 51, and the rejection of claims 8, 9, 32, 33, 50, and 51 under 35 U.S.C. § 102(e) should be withdrawn.

(4) With respect to claims 10-12, 34, 35, 49, 52, and 53, the Office Action states that Goldszmidt discloses that one or more available gateways are a subset (the Office Action states clusters of FIG. 1a) of said plurality of distributed gateways, available gateways are gateways local to said detected failed gateway (the Office Action states detecting a failed server) and grouping two or more of said plurality of distributed gateways.

In rebuttal to the above, with respect to claims 11, 35, and 53, nowhere does Goldszmidt disclose or suggest Applicant's claimed available gateways that are local to the detected failed gateway because Goldszmidt does not state any geographical limitation on the servers whatsoever. For this reason, Goldszmidt does not anticipate Applicant's claims 11, 35, and 53, and the rejection of claims 11, 35, and 53 under 35 U.S.C. § 102(e) should be withdrawn.

(5) Applicant asserts that dependent claims 10, 12, 34, 49, and 52 are allowable at least by virtue of their dependence upon allowable independent claims 1 (10, 12), 27 (34), and 44 (49, 52).

(6) With respect to claims 28, the Office Action states that Goldszmidt discloses said management recovery system is operable to assign management responsibility of said one or more network elements for which said detected failed gateway had management responsibility to at least one other of said plurality of distributed gateways (the Office Action states detecting failure of a streaming server and switching the client agent to an alternate streaming server).

In rebuttal to the above, nowhere does Goldszmidt disclose or suggest Applicant's claimed management recovery system that assigns management responsibility of a network element from a failed gateway to another of the plurality of distributed gateways because Goldszmidt's servers (which the Office Action has drawn equivalence with Applicant's gateways) do not have management responsibility over Goldszmidt's clients (which the Office Action has drawn equivalence with Applicant's network elements). For this reason, Goldszmidt cannot anticipate Applicant's claim 28, and the rejection of claim 28 under 35 U.S.C. § 102(e) should be withdrawn.

(7) With respect to claims 29-31, the Office Action states that Goldszmidt discloses translation of a communication protocol utilized by said one or more network elements, said gateway monitoring system and said management recovery system are integrated on a common platform and operable to poll said plurality of distributed gateways (the Office Action states detecting failure in streaming servers acting as gateway to clients).

In rebuttal to the above, with respect to claim 29, Applicant has amended claim 29 to clarify that Applicant claims a translation from one communication protocol to another communication protocol. Nowhere does Goldszmidt disclose or suggest translation of a communication protocol, as discussed previously (see the argument with respect to claims 2 and 47). For this reason, Goldszmidt cannot anticipate Applicant's claim 29, and the rejection of claim 29 under 35 U.S.C. § 102(e) should be withdrawn.

In further rebuttal to the above, with respect to claim 30, the Office Action analogizes both the gateway management system and the management recovery system to Goldszmidt's control server, but Goldszmidt states that the client initiates functions such as the gateway

management system and management recovery system might perform, and the control server supports the client to enable these functions. Nowhere does Goldszmidt disclose or suggest that the client and the control server could be integrated on a common platform, and Goldszmidt's FIG. 3d teaches away from such a configuration. Applicant therefore asserts that Goldszmidt cannot anticipate Applicant's claim 30, and the rejection of claim 30 under 35 U.S.C. § 102(e) should be withdrawn.

In still further rebuttal to the above, with respect to claim 31, Goldszmidt cannot anticipate Applicant's claim 31 because nowhere does Goldszmidt disclose a gateway monitoring system that is operable to poll the plurality of distributed gateways, as shown previously with respect to claims 6 and 48. Therefore, Goldszmidt cannot anticipate Applicant's claim 31, and the rejection of claim 31 under 35 U.S.C. § 102(e) should be withdrawn.

(8) With respect to claim 41, the Office Action states that Goldszmidt discloses said management recovery system to present a user interface for alerting a user of said detected failed gateway.

In rebuttal to the above, nowhere in the cited passages does Goldszmidt disclose or suggest Applicant's claimed user interface for alerting a user of said detected failed gateway because Goldszmidt's sole use of a user interface is to provide the user with the opportunity, at the client, to switch servers based on the subjective evaluation of the streaming output presented to the user (Goldszmidt, col. 10, lines 21-27). Thus, Goldszmidt's user is specifically *not* presented with an alert of a detected failed server (the Office Action analogizes Goldszmidt's server to Applicant's claimed gateway). For this reason, Goldszmidt cannot anticipate Applicant's claim 41, and the rejection of claim 41 under 35 U.S.C. § 102(e) should be withdrawn.

On page 4, with respect to claims 13 and 14, with reference to cited passages FIGs. 1a and 1b, col. 7, line 11 – col. 8, line 34, and col. 9, line 48 – col. 10, line 63, the Office Action states that Goldszmidt discloses determining gateways that are included in a common grouping with said detected failed gateway and said grouping is predetermined based at least in part on a criteria selected from the group consisting of gateway communication protocol, gateway location, and any user defined criteria.

In rebuttal to the above, with respect to claim 13, even if the analogies of the Office Action did not fail, which they do, Applicant asserts that Goldszmidt teaches away from Applicant's claimed determining an available gateway from gateways that are included in a common grouping with the detected failed gateway because Goldszmidt states that the primary and alternate streaming servers are divided into at least two non-overlapping sets. Thus, the alternate streaming server could not be included in a common grouping with the primary (failed) streaming server, and Goldszmidt cannot anticipate Applicant's claim 13, and the rejection of claim 14 under 35 U.S.C. § 102(e) should be withdrawn. With respect to claim 14, although the cited passage gives no criteria for grouping the streaming servers together, Goldszmidt states elsewhere that the servers are grouped together by port number (Goldszmidt, col. 9, lines 2-4), but not by any of gateway communication protocol, gateway location, or user-defined criteria. For this reason, Goldszmidt does not anticipate Applicant's claim 14, and the rejection of claim 14 under 35 U.S.C. § 102(e) should be withdrawn.

On pages 4-8, with respect to claims 15-19, 21-26, 37, 38, 42, 43, 45, 46, 55-57, with reference to Goldszmidt's passages FIG. 1b and col. 7, line 11 -- col. 12, line 33:

(1) With respect to claims 15-17, 21-23, 37, 38, 46, and 56, the Office Action states that Goldszmidt discloses distributing said management activities of said detected failed gateway to at least one of said one or more available gateways, determining operational load of said available gateways (the Office Action states utilization rate) and performing load balancing in distributing said management activities to said at least one of said one or more available gateways and load balancing is performed autonomously by a processor-based system (the Office Action states detecting failure of a streaming server and switching the client agent to an alternate streaming server).

In rebuttal to the above, with respect to claims 15, 16, 21-23, 37, 38, and 56, nowhere does Goldszmidt disclose or suggest Applicant's claimed gateways (the Office Action has analogized Applicant's claimed gateways to Goldszmidt's servers) that perform Applicant's claimed management activities, because Goldszmidt's servers simply react to requests by a client for data, and route client requests from Goldszmidt's control server to Goldszmidt's servers. Further, and for the same reason, Goldszmidt does not disclose any sort of distribution of management activities. For this reason, Goldszmidt cannot anticipate claims 15, 16, 21-23,

37, 38, and 56, and the rejection of claims 15, 16, 21-23, 37, 38, and 56 under 35 U.S.C. 102(e) should be withdrawn.

(2) Applicant asserts that claims 17-19, 39, 55, and 57, are allowable at least by virtue of their dependence upon allowable independent claims 1, 27, and 44.

(3) With respect to claims 24, 25, 42, and 45, on pages 5 and 8, the Office Action states that Goldszmidt discloses translating a plurality of different communication protocols, user predefining at least one of said plurality of distributed gateways to be used in recovering management of one or more network elements for which a particular one of said plurality of distributed gateways has management responsibility in the event of a failure of said particular one of said plurality of distributed gateways (the Office Action states detecting failure of a streaming server and switching the client agent to an alternate streaming server).

In rebuttal to the above, with respect to claim 24, Applicant has amended claim 24 to clarify that the translation occurs from one communication protocol to another communication protocol. Applicant reiterates what is stated above that nowhere does Goldszmidt disclose protocol translation (see argument with respect to claims 2 and 47). Therefore, Goldszmidt cannot anticipate Applicant's claim 24, and the rejection of claim 24 under 35 U.S.C. § 102(e) should be withdrawn.

In rebuttal to the above, with respect to claims 25 and 42, Applicant reiterates what is stated above that nowhere does Goldszmidt disclose any sort of user interface for predefining anything at all (see argument with respect to claim 41), and thus, there is no way a user could perform Applicant's claimed step of the user's predefining at least one of said plurality of distributed gateways to be used in recovering management of one or more network elements. Therefore, Goldszmidt cannot anticipate Applicant's claims 25 and 42, and the rejection of claims 25 and 42 under 35 U.S.C. § 102(e) should be withdrawn.

(4) Applicant asserts that claims 45 and 46 are allowable at least by virtue of their dependence upon allowable claim 44.

(5) With respect to claims 26 and 43, on pages 6 and 8, the Office Action states that Goldszmidt discloses the user predefining criteria to be used in recovering management of one or more network elements in the event of a failure of one or said plurality of distributed

gateways (the Office Action states detecting failure of a streaming server and switching the client agent to an alternate streaming server).

In rebuttal to the above, Applicant reiterates what is stated above that nowhere does Goldszmidt disclose any sort of user interface for predefining anything at all (see argument with respect to claim 41), and thus, there is no way a user could perform Applicant's claimed step presenting a user interface that enables a user to predefine criteria to be used in recovering management of one or more network elements. Therefore, Goldszmidt cannot anticipate Applicant's claims 26 and 43, and the rejection of claims 26 and 43 under 35 U.S.C. § 102(e) should be withdrawn.

On pages 7 and 8, with respect to claims 36 and 54, with reference to cited passages col. 6, lines 32-60 and col. 7, lines 22-52:

With respect to claim 36, the Office Action states that Goldszmidt discloses translating a common communication protocol as said detected failed gateway. With respect to claim 54, the Office Action states that Goldszmidt discloses translation of a communication protocol utilized by said one or more network elements.

In rebuttal to the above, Applicant asserts that, in neither cited passage, nor elsewhere, does Goldszmidt disclose Applicant's claimed determining an available gateway that can translate a common communication protocol as the failed gateway. Goldszmidt states that a TCP router selects a node but nowhere does Goldszmidt disclose or suggest that the TCP router selects a node based on its ability to translate the same communications protocol as the failed gateway. As previously stated with respect to claims 2 and 47, communications protocol translation requires steps that are not disclosed or suggested by Goldszmidt, such as mapping protocol elements and reformatting protocol packets, and therefore Goldszmidt cannot anticipate claims 36 and 54.

In summary, with respect to dependent claims 2-4, 6-19, 21-26, 28-39, 41-43, and 45-58, for at least the reasons stated above, as well as by virtue of their dependency upon allowable independent claims 1, 27, and 44, Goldszmidt does not anticipate Applicant's dependent claims 2-4, 6-19, 21-26, 28-39, 41-43, and 45-58. Since Goldszmidt does not anticipate each and every element of Applicant's dependent claims 2-4, 6-19, 21-26, 28-39, 41-43, and 45-58, either expressly or inherently, a rejection under 35 U.S.C. § 102(e) is inappropriate. Applicant asserts that dependent claims 2-4, 6-19, 21-26, 28-39, 41-43, and 45-58 are now in condition for

allowance. Applicant respectfully requests the withdrawal of rejections under 35 U.S.C. § 102(e) with regards to dependent claims 2-4, 6-19, 21-26, 28-39, 41-43, and 45-58 for the reasons set forth above. Furthermore, a 35 U.S.C. § 103 rejection of these claims would be inappropriate as well. Applicant's claimed invention is not an obvious extension of the use of Goldszmidt to meet Applicant's patentable limitations.

V. REJECTIONS UNDER 35 USC § 103

On pages 8-9, paragraphs 4-5, the Office Action rejects dependent claims 20 and 40, which depend on claims 1 and 27, under 35 U.S.C. § 103(a) as being unpatentable over Goldszmidt in view of Wolf.

Applicant respectfully points out that the cited reference, Wolf, was published on April 16, 2002, almost a year after the filing date of the present application, May 29, 2001. Applicant respectfully reserves the right to file a petition under 37 C.F.R. § 1.131 to swear behind Wolf.

In order for a rejection under 35 U.S.C. §103 to be sustained, the Office Action must establish a prima facie case of obviousness. As pointed out in MPEP § 2142, one of the three criteria to establish a prima facie case of obviousness is that the prior art reference(s) must teach or suggest all the claim limitations. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Further, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

On page 9 of the Office Action, in paragraph 5, with respect to dependent claims 20 and 40,

(1) The Office Action states that Goldszmidt's teachings still apply as set out above.

As a rebuttal to Examiner's position, Applicant respectfully points out that Goldszmidt fails as a reference under 35 U.S.C. § 103 for the same reasons recited above with respect to the 35 U.S.C. § 102 rejection. Therefore, Applicant asserts that Goldszmidt does not make obvious Applicant's invention for the reasons stated above.

(2) The Office Action states that Goldszmidt does not specifically disclose load balancing is performed according to a greedy algorithm.

(3) The Office Action states that Wolf discloses load balancing is performed according to a greedy algorithm (the Office Action states using a logical assignment of overlapping clusters is updated periodically via a greedy algorithm) (Wolf, col. 9, lines 25-62, col. 17, lines 35-52).

In rebuttal to the above, Applicant asserts that nowhere does the combination of Goldszmidt and Wolf disclose or suggest Applicant's claimed performing load balancing according to a greedy algorithm in distributing the management activities to the available gateways because neither Goldszmidt nor Wolf discloses distributing management activities in the servers (the Office Action equates Goldszmidt's servers with Applicant's claimed gateways). Instead, Goldszmidt's servers do not perform management activities, and Wolf states a method for balancing load across a plurality of web servers of a web server farm hosting multiple web sites designed to handle multiple customers including the step of logically assigning each web site to one or more servers according to various predetermined criteria. If either Goldszmidt or Wolf were to meet the requirements set out in the MPEP to make obvious Applicant's claimed invention, then either or both would have to define management activities and describe their distribution. Only then could the presence or absence of a greedy algorithm be relevant to the patentability of Applicant's claims 20 and 40. For this reason, the combination of Goldszmidt and Wolf cannot make obvious Applicant's claims 20 and 40, and the rejection under 35 US.C. 103(a) should be withdrawn.

In further rebuttal to the above, Applicant asserts that Goldszmidt and Wolf are not combinable because to combine them would render Goldszmidt unsatisfactory for its intended purpose. The MPEP § 2143.01(V) states that, when combining references, if the proposed

modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to combine the references (*In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In Goldszmidt, the clients request a server by ID number based on IDs that were provided to the client by the control server. In Wolf, customers (Goldszmidt's clients) are assigned to servers by a load controller. Thus, the proposed modification to Goldszmidt of adding the teachings of Wolf would cause Goldszmidt to become unsatisfactory for its intended purpose because Goldszmidt requires a client to detect a failure and request a new server, whereas if Wolf were added to Goldszmidt, when a client of Goldszmidt automatically failed over to the alternate server it was provided the ID of when it first requested a server, Wolf's assignment by routing probabilities could cause another requesting client to overload the alternate server.

In still further rebuttal to the above, Wolf also states that the set of all servers to which a particular web site is assigned is a cluster (Wolf, col. 1, lines 64-66), and that clusters can overlap so that more than one web site can be assigned to a server. The sets of servers as defined by Goldszmidt are mutually exclusive, whereas the Wolf's clusters can overlap. In Goldszmidt, the primary and alternate IDs point to servers that are in mutually exclusive sets. The server grouping and assignment mechanisms in Goldszmidt and Wolf would not operate compatibly, and thus Goldszmidt would become unsatisfactory for its intended use.

In even still further rebuttal to the above, the MPEP § 2143.01(VI) states that if the proposed combination would change the principle of operation of the prior art, then the teaching cannot render the claims prima facie obvious (*In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Applicant asserts that the proposed combination of Goldszmidt with Wolf would change the principle of operation of Goldszmidt because Goldszmidt is designed to allow the client to automatically switch from one server set to another mutually exclusive server set when the client detects a failure in the first server set, whereas Wolf's servers are grouped according to web site affinity, and the groups (clusters) are designed to overlap.

Because Goldszmidt and Wolf combined do not teach or suggest all the claim limitations of Applicant's claims 20 and 40, and because Goldszmidt and Wolf are not combinable, Applicant's dependent claims 20 and 40 are not made obvious by Goldszmidt and Wolf, and a rejection under 35 U.S.C. § 103(a) is inappropriate. Applicant asserts that dependent claims 20 and 40 are now in condition for allowance. Applicant respectfully requests the withdrawal of

the rejection under 35 U.S.C. § 103(a) with regards to dependent claims 20 and 40 for the reasons set forth above.

VI. CONCLUSION

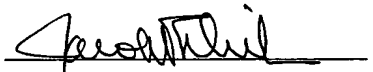
Independent claims 1, 27, and 44 are believed to be in condition for allowance for the reasons provided herein. All dependent claims, 2-4, 5-26, 28-43, and 45-58, are also allowable for the reasons presented above, and further because they depend upon allowable independent claims, and are therefore also in condition for allowance.

One dependent claim has been added (claim 58) and one dependent claim has been cancelled (claim 5), and thus no new fees for claims are anticipated. The Commissioner for Patents is authorized to charge fees for a Request for Continued Examination and Request for a one-month extension of time, both for a large entity, or credit overpayment, to Deposit Account No. 03-2410, Order No. 28579-180.

The following information is presented in the event that a call may be deemed desirable by the Examiner: Jacob N. Erlich (617) 854-4000

Respectfully submitted,
Semih Secer, Applicant

Date: March 30, 2006

By: 

Jacob N. Erlich
Reg. No. 24,338
Attorney for Applicant